

Date of Hearing: April 8, 2021

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 56 (Salas) – As Amended March 26, 2021

SUBJECT: Benefits: outgoing mail, identity verification, and direct deposit

SUMMARY: This bill would comprehensively regulate the Employment Development Department (EDD) by, among other things, codifying various recommendations from State Auditor related to EDD. Specifically, **this bill would:**

- 1) Require an annual corrective action plan to contain specified information and to be submitted to the Legislature by December 15 every year.
- 2) After January 1, 2023, require EDD, upon appropriation by the Legislature, to provide access to and pay for identity theft monitoring for any individual who receives outgoing United States mail from the department that contains a full social security number (SSN).
- 3) Upon appropriation by the Legislature, require EDD to do the following, among other things:
 - Report on its website, at least once every six months, specified information, including: (1) the amount of benefit payments for which it must assess potential overpayments; (2) the amount for which it has issued overpayment notices; (3) the amount of overpayments waived; and (4) the amount repaid related to those overpayment notices.
 - Immediately perform a risk assessment of its deferred workloads, including deferred eligibility determinations and retroactive certifications, as specified.
 - Develop a workload plan that prioritizes its deferred workloads based on the risk assessment performed and determine the staffing and information technology resources needed to accomplish the work within expected time frames, as specified.
 - Immediately begin modeling workload projections that account for possible scenarios that would cause a spike in unemployment insurance claims, and plan its staffing around the likelihood of those scenarios, including having a contingency plan for less likely scenarios that would have a significant impact on its workload.
 - By June 1, 2022, determine how many of its temporary automation measures for claims processing it can retain and by September 1, 2022, make those a permanent feature of its claims processing.
 - By June 1, 2022, identify the elements of the Benefit Systems Modernization process that can assist in making timely payments and that it can implement incrementally, and prioritize implementing the elements most likely to benefit Californians.
 - Regularly cross match unemployment benefit claims against information about individuals incarcerated in state prisons and county jails to ensure that it does not issue payments to people who are ineligible for benefits, and perform the cross matches as

quickly as possible after individuals file claims and with as little disruption of legal and eligible claims as possible.

- 4) Upon appropriation by the Legislature, require EDD to convene two working groups, including one to assess the lessons learned from claim surges, and one to coordinate the work needed to resolve each complaint of identity theft, make decisions about necessary staffing levels, and add staffing to accomplish the work in order to ensure that EDD provides appropriate assistance to victims of identity theft, as specified.
- 5) Require any request for claimant personal identification information be made in accordance with the most recent federal National Institute of Standards and Technology (NIST) Special Publication 800-63 standards, as specified.
- 6) Require the Director of EDD to report to the Assembly Committee on Insurance, the Assembly Committee on Labor and Employment, and the Senate Committee on Labor, Public Employment and Retirement by June 30th of each year about EDD's fraud deterrence and detection activities, including the effectiveness of cross matching claims against information about incarcerated individuals, as specified.

EXISTING LAW:

- 1) Prohibits any state agency from sending any outgoing United States mail to an individual that contains personal information about that individual, including, but not limited to, the individual's SSN, telephone number, driver's license number, or credit card account number, unless that personal information is contained within sealed correspondence and cannot be viewed from the outside of that sealed correspondence. (Gov. Code Sec. 11019.7(a).)
- 2) Provides that, notwithstanding any other law, commencing on or before January 1, 2023, a state agency shall not send any outgoing United States mail to an individual that contains the individual's social security number unless the number is truncated to its last four digits. (Gov. Code. Sec. 11019.7(b).)
- 3) Provides a limited exception to the prohibition described in 2), above, thereby allowing outgoing mail with full SSNs in the following circumstances:
 - Federal law requires the inclusion of the SSN.
 - The documents are mailed to a current or prospective state employee.
 - An individual erroneously mailed a document containing a SSN to a state agency, and the state agency is returning the document.
 - The document is in response to a valid request for access to PI, pursuant to the Information Practices Act.
- 4) Requires, on or before September 1, 2021, each agency that mails an individual's full or truncated SSN to that individual, other than as permitted as described in 3), above, to report to the Legislature regarding when and why it does so. (Gov. Code Sec. 11019.37(b)(2)(A).)

- 5) Requires any state agency that cannot, in its own estimation, comply with 2), above, to submit an annual corrective action plan to the Legislature until that agency is in compliance. (Gov. Code Sec. 11019.37(b)(2)(B).)
- 6) Establishes the Employment Development Department (EDD) which is responsible for administering the state's unemployment insurance (UI) program, including the payment of unemployment compensation benefits to eligible persons. (Unemp. Ins. Code, Sec. 201 et seq.)
- 7) Authorizes the California Department of Corrections and Rehabilitation (CDCR) to provide the social security numbers of current or former inmates to EDD, the California Workforce Development Board (CWDB), or the California Workforce Development Board's designee, as specified. (Pen. Code Sec. 11105.9(a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of this bill:** This bill seeks to implement comprehensive reforms at EDD to both accelerate payments to eligible applicants and prevent criminal fraud. This bill is author sponsored.
- 2) **Author's statement:** According to the author:

The Employment Development Department has been plagued by administrative and technical issues since March 2020, when the surge of unemployment insurance claims overwhelmed EDD's systems and resulted in millions of Californians being forced to wait months to receive the benefits they needed and resulted in the state giving billions of dollars to inmates and fraudsters in one of the biggest fraud scandals in California's history. AB 56 institutes common sense reforms that have been recommended by the State Auditor and from the stories of those Californians who have had to suffer through EDD's failings.

- 3) **Widespread use of SSNs makes the identifier an attractive target for identity thieves:** According to the Social Security Administration, the use of the SSN has expanded significantly since its inception in 1936. Created merely to keep track of the earnings history of U.S. workers for Social Security entitlement and benefit computation purposes, it is now used as a nearly universal identifier. Assigned at birth, the SSN enables government agencies to identify individuals in their records and allows businesses to track an individual's financial information. Unfortunately, this universality has led to abuse as the SSN is a key piece of information used to commit identity theft. The Federal Trade Commission estimates that as many as 9 million Americans have their identities stolen each year.¹

For decades, California residents have benefited from laws protecting SSNs from disclosure by the private sector and government agencies. By way of example, SB 458 (Peace, Ch. 685, Stats. 1998) prohibited state agencies from sending any correspondence to an individual that contains personal information about that individual (*e.g.*, social security number, driver's

¹ Puckett, *The Story of the Social Security Number* Social Security Bulletin, Vol. 69, No. 2, 2009.)

license number, telephone number, or credit card account number) unless the correspondence is sealed. Additionally, since 2002, California has restricted the use and display of SSNs by private actors (*see* SB 168 (Bowen, Ch. 720, Stats. 2001)) by prohibiting companies and persons from engaging in certain activities, such as:

- posting or publicly displaying SSNs;
- printing SSNs on cards required to access the company’s products or services;
- requiring people to transmit an SSN over the internet unless the connection is secure or the number is encrypted;
- requiring people to log onto a website using an SSN without a password; or,
- printing SSNs on anything mailed to a customer unless required by law or the document is a form or application.

Yet despite states like California regulating the use and disclosure of SSNs, identity theft and fraud continue to rise. In September 2005, the United States Government Accountability Office issued a report entitled, *Social Security Numbers: Federal and State Laws Restrict Use of SSNs, yet Gaps Remain*. The report found that “SSN use is widespread. Agencies at all levels of government frequently collect and use SSNs to administer their programs, verify applicants’ eligibility for services and benefits, and perform research and evaluations of their programs. Although some government agencies are taking steps to limit the use and display of SSNs, these numbers are still available in a variety of public records held by states, local jurisdictions, and courts[.]”

After widespread media coverage of EDD printing full SSNs on correspondence to millions of Californians in 2015, EDD claimed it would begin to redact SSNs on 75 percent of all mailed documents. In a recent report (hereinafter “Report”) regarding EDD’s privacy protection practices when mailing documents to its customers, the State Auditor concluded that “[a]lthough EDD has undertaken efforts since 2015 to reduce the amount of mail it sends to claimants that include full SSNs, its efforts have been insufficient.” Specifically, the State Auditor found that “EDD likely sent more than 17 million pieces of mail containing full Social Security numbers (SSNs) to a total of more than a million people in fiscal year 2017–18 [and that] several of the security incidents [...] reviewed from 2015 through 2018 showed that EDD exposed nearly 300 claimants to the risk of identity theft when it inappropriately disclosed their personal information, including SSNs, to other mail recipients.”²

- 4) **Mass unemployment fraud during the COVID-19 pandemic:** More recently, a surge in the filing of unemployment claims began in March 2020 following the issuance of a statewide stay-at-home order at the start of the COVID-19 pandemic which resulted in a significant increase in EDD’s workload. During the same time period, Congress expanded

² State Auditor Report 2018-129, *Employment Development Department: Its Practice of Mailing Documents Containing Social Security Numbers Puts Californians at Risk of Identity Theft* <<http://www.auditor.ca.gov/pdfs/reports/2018-129.pdf>> [as of Mar. 26, 2021].)

federal UI benefits and relaxed the eligibility criteria for receiving those benefits through the Coronavirus Aid, Relief, and Economic Security Act.

Beginning in July 2020, EDD criminal investigators began identifying specific cases of UI fraud involving the information of incarcerated individuals and communicating that information to local law enforcement agencies. In late November 2020, nine county district attorneys announced the discovery of widespread UI fraud involving tens of thousands of incarcerated individuals that took place during the first six months of the pandemic. The fraudulent claims primarily involved federal Pandemic Unemployment Assistance (PUA) claims. It was reported that in most cases the payments were sent via prepaid debit cards to addresses used on claims applications (i.e., addresses outside of a correctional facility) with the funds later deposited to inmate accounts in jails and prisons.³

The extent of the fraud was uncovered after the U.S. Department of Labor crosschecked federal UI claims data against a list of state prison inmates that it had subpoenaed from the state and identified approximately 35,000 claims involving individuals incarcerated in the state's prisons. EDD estimated that it paid roughly \$810 million in benefits between January 2020 and November 2020 to 45,000 claimants with information that matched incarcerated individuals.⁴ Those figures include individuals incarcerated in county jails who were identified after EDD contracted with a private vendor that provided cross-reference inmate data "from prisons and jails in multiple states," including access to "real-time incarceration and arrest records."⁵

The State Auditor conducted an audit of EDD's management of federal funds related to the COVID-19 pandemic and published its findings in January 2021. The report concluded that billions of dollars of benefit payments were improperly paid due to significant weaknesses in EDD's approach to fraud prevention. The report stated that EDD was particularly vulnerable to fraud associated with incarcerated individuals because "it lacked a system to cross-match all incoming claims against incarceration data." The report noted that as of 2016, at least 35 other states had a system to cross-match unemployment claims against state prison data and 28 states were cross-matching claims against county jail data.⁶ The report also indicated that EDD was aware of the fact that it did not have a way to cross-match against incarceration data and had considered adopting a cross-match system in recent years.⁷

According to the report, EDD contacted CDCR in August 2020 about sharing state prison data to aid the department in identifying fraud. A data sharing agreement was not reached until the Attorney General authorized CDCR to provide inmate information to EDD in December 2020. The temporary and precarious nature of the existing data sharing agreement between EDD and CDCR as well as the potential for ongoing fraud if data sharing does not

³ New York Times, *Unemployment Scam Using Inmates' Names Costs California Hundreds of Millions* <https://www.nytimes.com/2020/11/24/us/california-unemployment-fraud-inmates.html> [as of April 1, 2021].

⁴ State Auditor, *Employment Development Department: Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments*, Report 2020-628.2, p. 27 <http://www.auditor.ca.gov/reports/2020-628.2/index.html> [as of April 1, 2021].

⁵ *Id.* at pp. 29-30.

⁶ *Id.* at p. 29.

⁷ *Id.* at pp. 28-29.

take place between the departments led the State Auditor to make the a number of recommendations, many of which this bill would now codify.

- 5) **Bill seeks to increase data security for personal information:** As described in Comment 3, above, EDD has long been criticized for its treatment of sensitive personal information (PI), such as SSNs. AB 56 is one of many bills over the past decade that would seek to create improved data security standards and protocols for EDD's treatment of claimant PI. Most recently, AB 499 (Mayes, Ch. 155, Stats. 2020) prohibits, beginning in January of 2023, any state agency from sending outgoing US mail to an individual that contains the individual's full SSN, unless federal law requires the inclusion of a full SSN. AB 499 also required, January 1, 2024, any state agency that, in its estimation, is unable to comply with the prohibition on mailing full SSNs to submit an annual corrective action plan to the Legislature until that agency is able to comply with the prohibition. AB 56 would now flesh out the requirements of the annual corrective action plans established by AB 499.

Specifically, this bill would require annual corrective plans to be submitted to the Legislature by December 15th of every year, and would require those plans to have, at a minimum, the following information:

- The steps the agency has taken to stop including full SSNs on outgoing mail.
- The number of documents sent as outgoing mail from which the agency has successfully removed full SSNs and the approximate mailing volume corresponding with those documents.
- The remaining steps that the agency plans to take to remove or replace SSNs it includes on documents sent as outgoing mail.
- The number of documents and approximate mailing volume associated with those documents that the agency has yet to address.
- The expected date by which the agency will stop sending documents that contain SSNs as outgoing mail to individuals.

Not only should these requirements ensure that the Legislature has adequate information to evaluate the progress agencies are taking to protect the SSNs of California residents, these elements will likely encourage agencies that continue to mail SSNs to realistically address shortcomings within their respective agencies and develop a plan to better protect the sensitive PI of California residents.

This bill would also require that EDD follow the most recent federal National Institute of Standards and Technology (NIST) Special Publication 800-63 standards whenever requesting personal identification information from a claimant. NIST creates security standards and guidelines, including minimum requirements for federal systems, and promotes the US economy and public welfare by providing technical leadership for the nation's measurement and standards infrastructure. Special Publication 800-63 specifically deals with identity proofing, registration, authenticators, management processes, authentication protocols, federation, and related assertions. In the executive summary for Special Publication 800-63, NIST notes:

Digital identity as a legal identity further complicates the definition and ability to use digital identities across a range of social and economic use cases. Digital identity is hard. Proving someone is who they say they are — especially remotely, via a digital service — is fraught with opportunities for an attacker to successfully impersonate someone. [...]

Identity proofing establishes that a subject is who they claim to be. Digital authentication establishes that a subject attempting to access a digital service is in control of one or more valid authenticators associated with that subject’s digital identity. For services in which return visits are applicable, successfully authenticating provides reasonable risk-based assurances that the subject accessing the service today is the same as that which accessed the service previously. Digital identity presents a technical challenge because this process often involves proofing individuals over an open network, and always involves the authentication of individual subjects over an open network to access digital government services. The processes and technologies to establish and use digital identities offer multiple opportunities for impersonation and other attacks.⁸

As described by the State Auditor, “one of the key ways that EDD attempts to prevent impostor fraud is by verifying the identities of prospective claimants as a condition to providing benefits, as federal law requires. Historically, this process has included basic automated verifications to ensure that the information that claimants submit to EDD, such as SSNs and driver’s license numbers, match the information retained by the U.S. Social Security Administration and California Department of Motor Vehicles. If these verifications detect discrepancies, EDD activates a manual identity verification process to confirm whether the claimant is the true owner of the identity. When it activates the manual identity verification process, EDD’s system suspends or stops payments to the affected claim while EDD attempts to verify the claimant’s identity. EDD will pay eligible claimants whose identities it confirms for the weeks their payments were paused.”

The report continues, “[I]n October 2020, EDD introduced a new online identity verification tool, ID.me, as part of its efforts to process claims faster while preventing impostor fraud at the onset of a claim. EDD has indicated that ID.me makes it easier for claimants to verify their identities, reduces the amount of manual work by EDD staff necessary to process claims, and includes more robust protections against impostor fraud.”⁹

If ID.me works according to plan, it stands to improve EDD’s outcomes by both better preventing impostor fraud while at the same time speeding up the identity verification process for eligible applicants, ultimately resulting in the timely delivery of UI benefits. Requiring EDD to follow the NIST standards, which are routinely updated as technology evolves, when it requests PI from claimants for identity verification will create an important baseline protection for claimants as EDD works through its use of programmatic tools, old and new.

⁸ Grassi, Garcia, and Fenton, *NIST Special Publication 800-63 Revision 3, Digital Identity Guidelines* (June 2017) <https://doi.org/10.6028/NIST.SP.800-63-3> [as of Apr. 2, 2021].

⁹ State Auditor, *Employment Development Department: Significant Weaknesses in EDD’s Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments*, Report 2020-628.2, p. 6 <http://www.auditor.ca.gov/reports/2020-628.2/index.html> [as of Apr. 2, 2021].

- 6) **Cross matching claimant information against county inmate populations:** This bill would require EDD to “regularly cross match unemployment benefit claims against information about individuals incarcerated in state prisons and county jails to ensure that it does not issue payments to people who are ineligible for benefits. The department shall perform the cross matches as quickly as possible after individuals file claims and with as little disruption of legal and eligible claims as possible.” This provision stems directly from the State Auditor, who recommended that the Legislature to amend state law to require EDD to regularly cross-match its claims against data from state and local correctional facilities.¹⁰

In opposition to this bill, Legal Aid at Work, the Coalition of California Welfare Rights Organizations, and Legal Services for Prisoners with Children argue that:

[I]ncarcerated people were the victims of the recent fraud, and had their information used to apply for benefits without their knowledge or consent. Formerly incarcerated individuals have sought [] assistance with responding to EDD’s freezing of their accounts or even requests to return benefits they never received, as a result of having someone else use their information. [...]

[O]ur overriding concern is that the bill as written will prevent legitimate claims for unemployment and lead to the wrongful denial of a critical safety net resource to formerly incarcerated individuals who already face particular difficulties getting back into the labor market because of the stigma attached to their convictions and never incarcerated individuals alike. Even now, individuals, both formerly incarcerated and those who were never incarcerated, are being wrongfully denied benefits. [...]

Wrongful denials are likely both because of delays in reporting releases from incarceration and recordkeeping errors in California’s criminal records systems. Recordkeeping errors in criminal history databases are well documented and extremely common.

These groups argue that they must oppose this bill “unless it is amended to omit the requirement of cross-matching unemployment benefit claims against information about individuals incarcerated in state prisons and county jails.”

Staff notes that this bill’s requirement to cross match unemployment benefit claims against information about incarcerated individuals is the subject of multiple bills moving through the Legislature this year, including AB 110 (Petrie-Norris), which is also before this Committee. While AB 110 and this bill are not necessarily in conflict, creating multiple cross matching requirements in different code sections to achieve the same goal could create unnecessary confusion and result in duplicative efforts on the part of EDD, CDCR, and the counties. Given this practical concern, taken together with the arguments raised by the opposition, the author should consider removing the cross matching requirement from this bill. If such an amendment were adopted, AB 56 would, however, still maintain the requirement that EDD assess the effectiveness of any cross matching it does and report that information to the Legislature, as specified. This requirement should ensure that the Legislature is well

¹⁰ *Id.* at p. 8.

informed about best (and worst) cross matching practices should it wish to legislate in this area in the future.

Author's amendment:

On page 12, strike lines 17-25

On page 14, line 20, strike "pursuant to Section 320.4"

- 7) **Requires that identity theft prevention and mitigation services be offered to individuals whose SSN has been improperly disclosed:** This bill would require, upon appropriation by the Legislature, EDD to pay for identity theft mitigation monitoring for any individual who receives mail from the department that impermissibly contains the individual's SSN.

A similar requirement can be found within California's data breach notification law. Specifically, businesses or persons who own or license computerized data that includes PI are required to disclose data breaches to the persons whose PI was, or is reasonably believed to have been, acquired by an unauthorized person. Additionally, if the person or business providing the notification was the source of the breach, they must also offer to provide identity theft prevention and mitigation services to the affected person, as specified. (*See* Civ. Code Sec. 1798.82.) Staff notes that this requirement under existing law is imposed only on private actors, not state agencies. That being said, this Committee has approved legislative efforts in the past that would have required government entities to extend identity theft and mitigation services to individuals affected by government data breaches. (*See* AB 499 (Mayes, Ch. 155, Stats. 2020 (Apr. 11, 2020 version) and AB 241 (Dababneh, 2017).)

This bill would additionally require EDD to convene a "working group to coordinate the work needed to resolve each complaint of identity theft, make decisions about staffing levels necessary, and add staffing to accomplish the work in order to ensure EDD provides appropriate assistance to victims of identity theft who report fraud through the department's online fraud reporting portal."

Presumably, this requirement should help ensure that EDD maintains an appropriate focus on the issue of identity theft while simultaneously addressing the variety of other pressing issues, such as unfreezing the accounts of eligible claimants, speeding up the process by which it verifies claimant identity, and addressing issues of fraud, among others.

- 8) **Numerous bills introduced this year to address issues with EDD:** In response to this crises at EDD, numerous bills have been introduced this year in the Legislature, of which AB 56 is one. Among those bills are AB 12 (Seyarto) which would require state agencies to stop sending full SSNs on outgoing mail as soon as feasible. AB 110 (Petrie-Norris), AB 23 (Chen), and SB 39 (Grove) would all require EDD to cross match claimant information with information provided by CDCR and counties prior to making any payment of unemployment benefits to ensure that the claimant is not an inmate at a state prison or county jail. Additionally, AB 74 (Lorena Gonzalez) would require EDD to give claimants the option of receiving payments through direct deposit into a qualifying account of their choice.

There is considerable overlap among these bills and others moving through the Legislature. This Committee has worked with authors to ensure that any duplicative provisions are

eliminated in the handful of ABs addressing the EDD situation currently before the Committee, but there are many other bills that continue to have overlapping or conflicting provisions. The authors of these various bills should work collaboratively to ensure that the Legislature passes a series of bills that complement each other and will enhance EDD's performance, which should benefit all California residents.

9) **Related legislation:** AB 12 (Seyarto) *See* Comment 8.

AB 23 (Chen) *See* Comment 8.

AB 110 (Petrie-Norris) *See* Comments 6 and 8.

AB 74 (Lorena Gonzalez) *See* Comment 8.

SB 39 (Grove) *See* Comment 8.

10) **Prior legislation:** AB 499 (Mayes, Ch. 155, Stats. 2020) *See* Comment 5.

SB 447 (DeSaulnier, 2012) would have prohibited a state agency from sending any communication to any individual that contains the full SSN of that individual unless required by federal law. SB 447 was vetoed by Governor Brown, who argued that this prohibition "would hinder the ability of state agencies to promptly and accurately provide information to run essential programs."

SB 458 (Peace, Ch. Stats. 1998) *See* Comment 3.

11) **Double-referral:** This bill has been double-referred to the Assembly Committee on Insurance.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

Coalition of California Welfare Rights Organizations
Legal Aid at Work
Legal Services for Prisoners with Children

Analysis Prepared by: Nichole Rocha / P. & C.P. / (916) 319-2200